Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 155.

IN ERROR TO THE SUPREME COURT OF CALIFORNIA.

JOHN E. SEXTON, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

The plaintiff in error was convicted under an indictment found by the grand jury of the county of El Dorado, in the State of California, which indictment is as follows (Record, fols. 5 and 6):

"IN THE SUPERIOR COURT OF THE COUNTY OF EL DORADO,
"STATE OF CALIFORNIA, THE 25TH DAY OF NOVEMBER,
"A. D. 1899.

"THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
"JOHN E. SEXTON and S. H. BRIGGS.

"John E. Sexton and S. H. Briggs are accused by the "grand jury of said county of El Dorado, by this indict- "ment, of the crime of extortion, committed as follows, "to wit:

"The said John E. Sexton and S. H. Briggs, prior to the "finding of this indictment, on or about the 20th day of "June, A. D. 1898, at the county of El Dorado, State of Cali- "fornia, did willfully, unlawfully and feloniously obtain "from one C. Greenwald certain personal property consist- "ing of money, the property of said C. Greenwald, to the "amount and value of thirty dollars, with the consent of "said Greenwald induced by the wrongful use and exercise "upon him of fear by means of a threat then and there "made by the said John E. Sexton and S. H. Briggs to "accuse him, the said Greenwald, of the crime of having, in "violation of the laws of the United States of America, sold "and delivered cigars in a form other than a new box not "before used for the purpose of packing cigars therein con- "trary to the form force and effect of the statute in such "case made and provided, and against the peace and dig- "nity of the people of the State of California.

"ABE DARLINGTON,
"*District Attorney.*"

Endorsed: A true bill, &c. R. B. Patterson, foreman of the grand jury.

Sundry proceedings subsequent to said conviction were had, which are shown by the transcript, and, finally, the defendant was sentenced (folio 12) to be "punished by im-"prisonment in the State prison of the State of California at "Folsom, for the term of two years."

The plaintiff in error thereupon appealed to the supreme court of the State of California (folios 13, 14), by which court, after argument, the conviction was affirmed.

Plaintiff in error thereupon sued out a writ of error in this court, directed to the supreme court of the State of California, with citation thereon, and in due course the same was returned into this court and transcript filed.

The errors assigned are as follows, viz. (folios 22, 23):

1. That the supreme court of the State of California committed manifest error in said action in deciding that section five hundred and eighteen of the Penal Code of the State of California is not in conflict with and repugnant to the provisions of section 1 of article 3 and with section 1 of article 14 of the Constitution of the United States, and with section 711 and section 5484 of the Revised Statutes of the United States.

2. That defendant is, by the judgment of the superior court in and for the county of El Dorado and by the said judgment of the supreme court of the State of California, affirming said judgment of said superior court, deprived of his liberty without due process of law, and is denied the equal protection of the law, contrary to the provisions of section 1, article 14, of the Constitution of the United States.

So much of the opinion of the supreme court of the State of California as is material to the present issue is as follows, viz:

"Defendant has been convicted of the crime of extortion, "and appeals to this court. By the indictment it was "alleged that defendant obtained thirty dollars from one "Greenwald under fear induced by threats upon the part "of defendant to accuse him (Greenwald) of the 'crime of "'having, in violation of the laws of the United States of "'America, sold and delivered cigars other than in a new box "'not before used for the purpose of packing cigars therein.' "In substance it may be said that defendant threatened to "accuse Greenwald of violating the United States revenue "laws, and under fear induced by such threats secured from "Greenwald the aforesaid sum of $30.

"It is insisted that the facts do not constitute an offense "against the laws of the State of California, but upon the "contrary constitute a crime exclusively within the juris- "diction of the Federal courts.

"We find nothing in this contention. The defendant is "charged with the crime of extortion, an offense directly "within the jurisdiction of the State courts. He is not "charged with a violation of a Federal statute, but with a "violation of a State statute. He threatens to accuse a man "with the commission of a crime. It makes no difference if "that crime be one solely triable in the Federal courts, for "defendant is not being tried for that crime.

"If he had threatened to have Greenwald arrested upon "the charge of counterfeiting the money of this country, and "was charged with the crime of extortion for that reason, "clearly his offense would be one against the laws of this "State.

"It would be extortion as defined by the penal code of "this State, and this court would not be concerned as to "whether or not defendant's crime was also punishable "under Federal laws.

* * * * * * *

"While the evidence tending to support the conviction in "this case is very weak, we are not prepared to say it is in- "sufficient. Owing to the peculiar circumstances of the "case, and the character of the evidence relied upon to "support the verdict, we think the law would have been "well satisfied with a judgment finding the defendant guilty "of a misdemeanor."

POINTS.

I.

Before proceeding to the consideration of the above alleged errors we may be permitted to call the attention of this court to the language of the supreme court of California (to be found on page 8, folio 17), which is as follows:

"Owing to the peculiar circumstances of the case, and "character of the evidence relied upon to support the "verdict, we think the law would have been well satisfied "with a judgment finding the defendant guilty of a mis- "demeanor. But that is a matter beyond review by this "court."

It thus appears that this plaintiff in error is condemned to suffer for a crime of which *the supreme court of California does not deem him guilty.*

II.

THE QUESTION PRESENTED IS A FEDERAL QUESTION.

It comes clearly within the definition given by this court in *Tennessee vs. Davis*, 100 U. S., at page 258:

"A case arises under the Constitution, not merely when "somebody comes into court to demand something conferred "upon him by the Constitution or law of the United States "or a treaty; but whenever its correct decision as to the "rights, privilege, claim, protection or defense of a party in "whole or in part, depends upon the construction of either."

And again in *Starin vs. The Mayor, &c., of New York*, 115 U. S., 248, this court said:

"Where it appears that some title, right, privilege or im- "munity on which recovery depends will be defeated by one "construction of the Constitution or a law of the United "States, or sustained by the opposite construction, the case "is one arising under the Constitution or laws of the United "States."

III.

WHERE A CRIME IS DEFINED BY THE LAWS OF THE UNITED STATES THE COURTS OF THE LATTER HAVE EXCLUSIVE JURISDICTION, EXCEPT WHERE IT IS OR MAY BE OTHERWISE PROVIDED BY LAW.

The Revised Statutes of the United States provide—

"SEC. 711. The jurisdiction vested in the courts of the "United States in the cases and proceedings hereinafter men- "tioned shall be exclusive of the courts of the several States.

"*First.* Of *all crimes* and *offenses cognizable under the au-*
"*thority of the United States.*"

This has been the law since 1789.

SEC. 629 (Twentieth):

"The circuit courts of the United States shall have exclu-
"sive cognizance of all crimes and offenses cognizable under
"the authority of the United States, *except where it is or may*
"*be otherwise provided by law.*"

(*U. S. Revised Statutes.*)

"SEC. 5484. Every person
"who shall receive any
"money or other valuable
"thing under a threat of in-
"forming, or as a considera-
"tion for not informing
"against any violation of any
"internal-revenue law, shall,
"on conviction thereof be
"punished by a fine not ex-
"ceeding two thousand dol-
"lars, or by imprisonment
"not exceeding one year, or
"both, at the discretion of the
"court, with costs of prosecu-
"tion."

(*Penal Statutes of California.*)

"SEC. 518. Extortion is the
"obtaining of property from
"another with his consent,
"induced by a wrongful use
"of force or fear, or under
"color of official right."

"SEC. 519. Fear such as
"will constitute extortion
"may be induced by a threat,
"either:

"1. * * *

"2. To accuse him, or any
"relative of his or member of
"his family of any crime."

(We have, for convenience of reference, printed in parallel columns section 5484 and sections 518, 519 of the Penal Code of California, under which the plaintiff in error stands convicted and sentenced.)

IV.

THE OFFENSE CHARGED BY THE INDICTMENT IS THE SAME OFFENSE SPECIFIED IN SECTION 5484 OF THE REVISED STATUTES OF THE UNITED STATES, AND IS PART OF THE INTERNAL-REVENUE LAWS.

The section of the Revised Statutes of the United States which defines this crime against the United States is:

"SEC. 3392. All cigars shall be packed in boxes not before "used for that purpose, containing, respectively, twenty-five, "fifty, one hundred, two hundred and fifty, or five hundred "cigars each, and any person who sells or offers for sale, or "delivers or offers to deliver, *any cigars in any other form* "*than in new boxes as above described*, or who packs in any "box any cigars in excess of the number provided by law to "be put in each box respectively, or who falsely brands any "box, or affixes a stamp on any box denoting a less amount "of tax than that required by law, shall be fined for each "such offense not less than one hundred dollars nor more "than one thousand dollars, and be imprisoned not less than "six months nor more than two years: *Provided*, That noth- "ing in this section shall be construed as preventing the "sale of cigars at retail by retail dealers who have paid the "special tax as such from boxes packed, stamped and "branded in the manner prescribed by law."

The language of the indictment is that:

"The said John E. Sexton and S. H. Briggs, &c., did will- "fully, unlawfully and feloniously obtain from one C. "Greenwald certain, &c., money, to the amount and value

"of thirty dollars, by *means of a threat then and there made by "the said John E. Sexton and S. H. Briggs to accuse him the "said Greenwald, of the crime of having, in violation of the "laws of the United States of America, sold and delivered cigars "in a form other than a new box not before used* for the pur- "pose of packing cigars therein."

The crime is charged almost in the exact language of sections 5484 and 3392 of the Revised Statutes of the United States.

The language of section 5484 is that—

"Every person who shall receive any money, &c., under "a threat of informing or as a consideration for not inform- "ing against any violation of any internal-revenue law, "shall," &c.

By section 3392 of the Revised Statutes it is made a crime to "sell, &c., any cigars in any other form than in new boxes," &c.

The charge of the indictment is that the plaintiff in error secured from Greenwald thirty dollars by means of a threat to accuse said Greenwald of having sold and delivered cigars "*in a form other than a new box not before used for the "purpose of packing cigars therein.*" The part quoted and italicized is the exact language of section 3392.

V.

THERE ARE MANY CRIMES DEFINED BY BOTH UNITED STATES AND STATE LAWS WHEREIN JURISDICTION OF THE PARTICULAR OFFENSE IS EXCLUSIVE IN THE COURTS OF THE UNITED STATES.

1. Homicide is an offense unquestionably cognizable under State laws; but where committed by United States officers while engaged in the performance of their duties as such officers, exclusive jurisdiction is in the United States courts. Such was the case of *Tennessee vs. Davis* (*supra*), wherein an officer engaged in performing his duty as such found it necessary to return the fire of sundry persons engaged in illicit distilling—an offense against the internal-revenue laws—the result of which was the death of one of such illicit distillers.

2. CUNNINGHAM *vs.* NEAGLE, 135 U. S., 1, was a killing by an United States marshal in the protection of a justice of this court. The case is too well known to this court to need more than a reference to it.

Embezzlement is another case clearly cognizable under State laws, but when the offense is committed by an officer or employee of a national bank the State has no jurisdiction of the offense.

Section 5209 of the Revised Statutes of the United States (part of the national banking act) provides for the punishment of six different offenses, all of which are offenses that may be committed against State laws, but none of which

Commonwealth vs. Feeley, 1 Va. Cases, 321 (Nov., 1813):

The court (Judges White, Stuart, Brockenbrough, Semple, Allen, Randolph, Dabney, and Daniel) in that case (an indictment for robbing the mail) "doth unanimously decide "that, as the offense described in the indictment in this case "is created by an act of Congress, the State court hath not "jurisdiction thereof."

Commonwealth vs. Fuller, 8 Met. (Mass.), 313 (1844):

This was an indictment for having in possession counterfeit coin with intent to utter and pass the same.

The COURT: The United States statute of April 21, 1806, provides "that nothing in this act contained shall be con-"strued to deprive the courts of the individual States of "jurisdiction under the laws of the several States over "offenses made punishable by this act," and the act of March 3, 1825, contained the same proviso.

"By the act of 1789, exclusive jurisdiction is not conferred "on the United States courts where the laws of the United "States shall otherwise direct."

"The above-mentioned statutes of 1806 and 1825 give "such other direction."

For this reason only the jurisdiction was sustained.

People vs. Fonda, 62 Mich., 401:

The COURT: "The question raised in this case is: The "Federal Government having declared the act charged "against this respondent a criminal offense, and provided "for the apprehension, trial and conviction under its laws, "had the State any jurisdiction, concurrent or otherwise, to

"deal with respondent, making the same act criminal, and "providing for its punishment?"

After citing the language of U. S. Rev. Stat., sec. 5209, the court proceeds: "The examination of this statute must "convince any one that the offense described in this (the "State) information, is very clearly described therein, and "fully within the scope of the act (of Congress) and the ju- "risdiction of the Federal courts."

"Congress by law enacted the national banking system, "and prescribed a punishment for the offense charged "against the respondent. It seems to me, clearly, the case "is one falling within the paragraph of sec. 711 (U. S.); and "that, by the Federal law, the jurisdiction of the State is "expressly excluded."

are cognizable under such laws when committed in regard to national banking associations.

In the case of *Commonwealth vs. Fenton*, 101 Mass., 204, the supreme court of that State, in reversing a conviction in the court below, said, in language plainly applicable here:

"The act of Congress from which the national banks derive "their existence and organization, makes full and ample "provision for the crime of embezzlement by any cashier, or "other officer of such bank.

"It makes no provision or reservation for its protection, "and punishment by any State authority, but makes it cog- "nizable under the authority of the United States.

"By the terms of the judiciary act (U. S. Stat., 1789; "sec. 511, U. S. Rev. Stat.) the courts of the United States "are vested with the exclusive cognizance of all crimes that "are made punishable by act of Congress, except when the "act of Congress makes other provision."

People vs. Fonda, 62 Mich., 401.

Com. vs. Ketner, 92 Pa., 372.

PERJURY.

Thomas vs. Loney, 38 Fed. Rep., 101, was a case in which Loney was charged before a State tribunal with having committed perjury in having testified falsely before a notary public in a proceeding regulating a contest for a seat in the House of Representatives of the United States.

Hughes, J., said:

"In general, and indeed in the great majority of cases, "perjury is an offense against the State, cognizable exclu- "sively by the State courts. But when committed by per-

"sons designated by penal laws of Congress, in proceedings "prescribed and regulated by acts of Congress, it is an "offense against the United States, and is exclusively cog- "nizable by the national courts."

In this court, on appeal, Mr. Justice Gray (134 U. S., 372) said:

"By the statutes of the United States the courts of the "United States have jurisdiction exclusive of the courts of "the several States, of 'all crimes and offenses cognizable "under the laws of the United States' (Rev. Stat., sec. 711, "cl. 1); and the circuit courts of the United States have ex- "clusive cognizance of all such crimes and offenses except "where otherwise provided by law.

"Congress has regulated by law the form in which notice "of a contested election may be given and answered, and "the time and manner in which depositions on oath of "witnesses in such cases may be taken before * * * a "notary public or any officer authorized to take depositions "by the laws of the State, or of the United States.

"Any one of the officers designated by Congress (such as "a notary public) performs this function, not under any "authority derived from the State, but solely under the "authority conferred by Congress, and perjury in giving "such testimony is punishable in the courts of the United "States.

"The administration of justice in the national tribunals "would be greatly embarrassed, and impeded, if a witness "testifying before a court of the United States, or upon a "contested election of a member of Congress, were liable to "prosecution and punishment in the courts of a State upon

"a charge of perjury, preferred by a disappointed suitor or "contestant.

"A witness who gives his testimony, pursuant to the Con- "stitution and laws of the United States, &c., is accountable "for the truth of his testimony to the United States only, "and perjury committed in so testifying is an offense against "the public justice of the United States and within the ex- "clusive jurisdiction of the courts of the United States, and "cannot, therefore, be punished in the courts of the State."

The instance given by the supreme court of California of the crime of counterfeiting the money of the United States is without point.

Counterfeiting was a crime under the laws of the several States before the adoption of the Constitution, and when the Congress adopted the act of March 3, 1825, that act contained a clause as follows: .

"And be it further enacted that nothing in this act con- "tained shall be construed to deprive the courts of the indi- "vidual States of jurisdiction under the laws of the several "States over offenses made punishable under this act."

Whatever might have been formerly said or held upon the question of counterfeiting has no bearing whatever upon the question before us at the present.

Chapter 24 of the act of January 16, 1877, has been amended so as to read as follows:

"Every person who falsely makes, forges, or counterfeits, "&c., any coin or bars in resemblance or similitude of the "gold and silver coins or bars * * * of the United

"States, * * * or who passes, utters, publishes, or sells, "&c., or has in his possession, &c., with intent to defraud "shall be punished, &c."

From this act the clause contained in the act of 1825 (above cited), reserving to the States the right to punish counterfeiting or passing counterfeit coin of the United States, has been omitted, and since that omission those offenses have not been cognizable by the courts of the States, and no prosecution under State laws has been attempted.

VI.

THE STATES HAVE NOTHING WHATEVER TO DO WITH THE INTERNAL-REVENUE LAWS OR THE CUSTOMS LAWS. IT WILL NOT BE PRETENDED THAT THEY HAVE ANY COGNIZANCE OF THE CRIMES ARISING UNDER THOSE LAWS.

The offense for which the plaintiff in error has been convicted and sentenced by the courts of the State of California is an offense against the internal-revenue laws of the United States and is punishable under those laws, and there is no reservation—as, from the nature of the case, there could not be—to the States of any jurisdiction in relation to such offenses.

If the United States laws failed to make the offense of extorting money "under threats of informing or as a con- "sideration for not informing against any violation of any "internal-revenue law," it would be perfectly competent for the State of California to punish such offense; but the United States having made such an extortion a crime under its

revenue laws, the State of California is without jurisdiction of the offense, and it must be punished, if at all, under the United States law alone.

VII.

TESTED BY THE FOREGOING CITATIONS, IT SEEMS PERFECTLY CLEAR THAT THE COURTS OF THE STATE OF CALIFORNIA HAVE NO JURISDICTION OVER THE OFFENSE CHARGED IN THIS INDICTMENT AGAINST THE PLAINTIFF IN ERROR.

VIII.

We do not feel it necessary to discuss the second assignment of error for the reason that if our contention be sound, that the plaintiff in error has been tried, convicted, and sentenced by the courts of the State of California for an offense over which those courts have no jurisdiction, it follows as a corollary that he has been and is "deprived "of his liberty without due process of law, and is denied the "equal protection of the law, contrary to the provisions of "section 1, art. XIV, of the Constitution of the United "States."

IX.

The judgment of the supreme court of California should be reversed, with costs to the plaintiff in error.

JAMES PARKER,

Attorney and of Counsel for the Plaintiff in Error.